IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.182-SB of 1995

Date of Decision: March 13, 2007

Pawan Kumar and another

...Appellants

VERSUS

State (U.T.Chandigarh)

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.K.S.Ahluwalia, Senior Advocate with
Mr.J.S.Lalli, Advocate,
for the appellants.

Mr.Rajiv Sharma, Standing counsel
for U.T.Chandigarh.

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RANJIT SINGH, J.

Accused of the allegations of dowry death coupled with conviction for offences under Sections 306/498-A IPC, both the appellants were sentenced to suffer RI for ten years and fine of Rs.1000/-. They were to undergo six months RI in case of default in payment of fine. In addition, the appellants were sentenced to suffer two years RI for their conviction under Section 498-A IPC and fine of Rs.500/- in default of payment of fine, they were directed to undergo

three months RI. They are now in appeal before this court.

Appellant Pawan Kumar married Smt.Kusum (deceased) on 22.6.1988. Though the marriage was initially to be performed at Amritsar, but ultimately it was held at Chandigarh at insistence of the appellants family. It was a dowry less marriage. Manohar Lal PW was the go-between in this marriage, which was performed at Khukhrain Bhawan, Chandigarh. As per the allegations, on the date of marriage, appellant Vinod Kumar, elder brother of the husband-appellant Pawan Kumar, enquired from the complainant, Raj Kumar, brother of the deceased whether the complainant was giving TV, VCR and scooter in the dowry or not. This happened in the presence of Mrs.Sarita Gupta (wife of complainant) and his friend Chaman Lal (PW-8). Though, as per complainant, Vinod Kumar was informed that complainant was not in a position to afford dowry, still on their persistence and demand, a sum of Rs.15,000/- was paid in cash in addition to clothes worth Rs.20,000/-, beds valued Rs.30,000/- and 15 tolas of jewellery valued at Rs.45,000/-. Other items, like the electrical goods and pieces of decoration valued at Rs.10,000/- were also given in dowry. The complainant has further alleged that when his late sister did not pay a customary visit to her parental house, he came to Chandigarh to meet her. There in the presence of his sister, the appellants held out that they will not allow Kusum to visit her parental house till their demand of scooter is met. The complainant, however, requested the appellants to visit Amritsar and also promised to pay the cash within his means. It is then that appellant Pawan Kumar and Kusum had gone to Amritsar and stayed there for a day, when a sum of Rs.7500/- was paid to appellant Pawan Kumar.

He, still did not feel happy. It is further disclosed that the complainant did not receive any letter from his sister. When Ashok Kumar (PW-10), another brother of the complainant, was sent to Chandigarh to meet late Kusum, he was then told by appellant Vinod Kumar that sum of Rs.7500/- would not be enough to buy a scooter and they would at least require Rs.13,000/-. PW-10 promised to make up the deficiency. As per this witness, demand of VCR was repeated besides advancing a threat that it would be in the interest of late Kusum if this demand was met. PW-10 accordingly narrated all this to his brother Raj Kumar, who, while taking with him one Rajinder Pal Singh Sarna (PW-13), a resident of Mohali, came to the house of his sister at Chandigarh and paid a sum of Rs.5500/- in cash to appellant Pawan Kumar, husband of late Kusum. This was done in the presence of appellant Vinod Kumar and his wife. It is further alleged that subsequently also, when Raj Kumar (PW-7) and Chaman Lal (PW-8) had come to meet late Kusum, the demand for VCR etc. alongwith the threat was repeated. They had then gathered the respectables from Amritsar and had met Munshi Ram, father of the appellants, who was staying and stationed at Amritsar. It is claimed that Munshi Ram assured the complainant and the respectables that he would tell his sons (appellants) to mend their ways saying that Kusum was like his daughter. At about 8.00 P.M. on 26.12.1988, Raj Kumar (PW-7) received a telephone call to the effect that his sister Kusum was serious. He spoke to one R.K.Sexena at Chandigarh, who subsequently informed him at about 10.00 A.M. that his sister Kusum was dead. Raj Kumar accordingly reached Chandigarh and made a report, Exh.PG, making allegations of demand of dowry and

alleging that the appellants were responsible for the death of his sister Kusum. Investigation followed and challan was presented leading to trial. The appellants pleaded not guilty to the charges and claimed trial.

Prosecution examined seventeen witnesses in all. The appellants examined six witnesses in defence. Besides making statement, it was pleaded that late Kusum was a sensible and sensitive girl. She had no problem with her husband-appellant Pawan Kumar or with his brother. It is further stated that she used to remain sad on account of not being visited by her kiths and kin. The support is also taken from the evidence led by the inhabitants of the locality, who have clearly stated that there was no trouble between the couple and that they were living happily.

I have heard the counsel for the parties.

Mr.K.S.Ahluwalia, the learned Senior counsel appearing for the appellants, would submit that evidence regarding demand of dowry is based on the oral account only that too basically coming from the closely related witnesses and as such would be unsafe for reliance. He would further submit that this oral account of demand of dowry given by closely related witnesses is pitted against the defence evidence led through independent witnesses staying in the same house or neighbourhood of the appellants, who are equal in number. Proceeding further, the counsel submits that in such an eventuality, the circumstances and the documents that are available on record as evidence would acquire significance for credence to the different versions coming on record from the witnesses produced by the respective sides. In this regard, Mr.Ahluwalia has very strongly relied

upon and referred to a suicide note, which according to the counsel, would totally belie the entire prosecution story and would stand in support of the defence case as projected through a viable evidence. He would also draw holes into the prosecution story by referring to the infirmities in the stand of the witnesses and their attempt to improve the case while giving their evidence before the court. On the other hand, the counsel for the Union Territory, by referring to the evidence of the complainant and independent witnesses like Rajinder Pal Singh Sarna (PW-12), Chaman Lal (PW-8) and Rajinder Kumar (PW-13) etc. says that the prosecution evidence is reliable and as such the appellants were rightly convicted by the trial court.

Though a suicide note was produced on record by the prosecution, but the counsel for the State would say that this suicide note is not a reliable piece of evidence and appears to have been got written under pressure. This attempt on the part of the counsel representing Union Territory appears to be little over stretched, specially in view of the background that this piece of evidence was brought on record not by the defence but by the prosecution itself. In view of the conflicting assertions between the parties, the respective evidence would need a proper analysis to see if the prosecution in this case succeeded in proving the charges or not.

There is no dispute between the parties that late Kusum died an unnatural death during the seven years of the marriage. She had committed suicide by hanging from the fan in the room of the house. Mr.Ahluwalia has made detailed reference to the evidence of Ajaib Singh (PW-6). This witness is a neighbourer of the appellants and was the first one to detect the hanging body of deceased. He

deposed that as an usual practice, he left the keys of a room adjoining the room of the appellants with the son of appellant Vinod Kumar, aged two years. On return in the evening, he did not notice the son of Vinod Kumar appellant coming to him while he normally always did. He also did not receive any response from the house of appellants. The eye witness then contacted Bhagwan Kaur (DW-3) and they both then found late Kusum hanging from the fan. Other persons from the neighourhood had also gathered around and had forced upon the door. Police were informed leading to subsequent events. The police, at that time, had found a signed hand written suicide note from the note book lying in the room. This was taken in possession. Though this hand written note was sent for examination by handwriting expert, who gave his expert opinion, but this piece of evidence was not produced before the court. An oral account about the handwriting of this suicide note was led in evidence through the Investigating Officer, who said that this note was in the handwriting of late Kusum and contained her signatures as well. Investigating Officer gave this evidence by referring to the report of the handwriting expert, which was not produced by the prosecution. Since this evidence was led by the prosecution itself, the same did not counter any objection from the defence. It is on the basis of this suicide note that the defence has built its entire case to say that the suicide by late Kusum was not related to any demand of dowry. The suicide note reads as under:-

> *“MAIN APNI MAUT KI KHUD JIMEWAR HOON. MERA PATI VA GHAR KE SABHI SADSAYE BAHUT ACHHE HAIN. SD/- KUSUM.”*

When translated into English, it reads:-

"I am myself responsible for my death. My husband and all members of the family are all very good."

It is on the basis of this suicide note that defence has urged that late Kusum did not commit suicide on account of harassment or demand of dowry as the case made out by the prosecution. While discarding this suicide, the trial court gave the following reasonings:-

"(A) It is just 2-1/2 line note and thus is very brief and cryptic. It does not give any reflection of reason of her allegedly committing of suicide;

(B) It is not indicative of any circumstance of neglect or want of care and feelings for her by her parents or other members or that she used to remain so upset that she was compelled by the circumstances to end her life;

(C) This note is a procured document. She was having no history of any ailment or any depressive disorders;

(D) Had her married life been blissful then normally she would have remained engrossed in her happy encounter with her husband and other family members and would have hardly any scope or cause to be meloncholous;

(E) That it is undated;

(F) That it does not nullifies the prosecution evidence. Had it been a genuine suicide note, it should have been wholesome note detailing some factors excruciating her

mental frame work particularly when her married span was just six months."

Finding fault with the suicide note on the ground that it is not indicative of any circumstance of neglect or want of care or feelings for her or her parents, cannot be taken as a reason to doubt the genuineness of the suicide note. It is required to be appreciated that it is written by a person, who has died shortly hereafter. What should be written or should not be written cannot be generally appreciated from the angle of a third person. There can be number of reasons for a dying person not to give indication of cause of death. Once this suicide note was found to be in the handwriting of the deceased and was duly signed by her, it was not open to be doubted for the reason as was noticed by the trial court. Even otherwise, a note by a disturbed person, who commits suicide after a short duration thereof, could not be expected to contain details in regard to the reasons, which had compelled him or her to commit suicide. Such a note can be expected to be short and crisp. Brevity of suicide note far from being a suspicious circumstance can also be an index of it being true and free from taint. It may have been detailed one. All this would depend upon an individual concerned. It can be noticed that a person intending to commit suicide may change mind in case that moment is some-how avoided either by thinking or writing or pondering over the issue, which may be agitating his or her mind. Without any basis, the trial court recorded this note to be a procured document, which did not appear to be even the case of the prosecution. It is to be noticed that this document was produced by prosecution. If it was a procured document, then prosecution was to

explain why it was led in evidence. It would not sound proper for the court to make such incriminating presumption about this vital piece of evidence, when it was not so urged by the party producing the evidence and when it is quite possible to draw a presumption the other way around as well. It is not the case of the prosecution that this suicide note is a procured document. What had prompted the deceased to commit suicide can not be really made out and to draw presumption that her married life was not blissful leading her to commit suicide is also not available for record. It cannot be presumed that the deceased had committed suicide as her married life was not blissful as observed by the trial court, specially so when no such presumption arise from the evidence on record. If there was any indication of what was working in the mind of the deceased, the same is reflected in the suicide note, from which it can reasonably be inferred that there was something else agitating the mind of the deceased and it was certainly not the treatment that she received at her matrimonial home. If it had been so, the deceased would not have written good about the family members of her in-laws. No infirmity can be attached to this suicide note on the ground of being un-dated as it was found immediately after the incident of suicide from the room where the body of the deceased was hanging and that too by investigating agency, i.e., police. To say that to be genuine, this suicide note should have been wholesome detailing some factors, would be substituting one's own view to a fact situation. To my mind, the reason given by the trial court seems to be stretched one and aimed at just to nullify the suicide note. This suicide note is worthy of reliance not because of contents or by discarding the

reasons given by the trial court, but due to another factor which is available from the evidence on record. The counsel for the appellants has rightly drawn my attention to letters, Exhs.D11 to D14, to say that if the deceased was harassed either by her husband or the in-laws family, she was bound to say so in the letters she had written to her mother. Realising that this would be held against the complainant and the prosecution, Raj Kumar (PW-7) while giving evidence made an attempt to cover this aspect. Without any justification, he brought out in his deposition that the letters written by his sister Kusum used to be censured. Still, this would not explain the replies that had been sent to her by their mother and other relations. There is no mention or indication of any trouble, harassment or demand of dowry reflected in any such letters. The perusal of letters, Exhs.D11 to D14, would show that parents of deceased Kusum were not well and had been sharing their condition in the letters so exchanged. An attempt was made to say that the deceased was not permitted to visit her ailing parents. This aspect is co-related to non-fulfillment of demand of dowry. If it had been so this was bound to be reflected in the suicide note or at least in any of the letters that were exchanged between the deceased and her parents and other relations. The fact that it is not so mentioned would lead to an inference that there was no such cause with the deceased to commit suicide. Appellants' counsel would be justified in saying this suicide note to be a dying declaration. This suicide note had been written in handwriting of the deceased and is duly signed by her. It contains a recital that deceased is responsible for her death. Obviously, it was written just prior to the death. It may be reasonable to assume that a dying

person is not likely to implicate innocent person falsely and while under expectation of a death is bound to state the truth. Ofcourse, it is true that dying declaration is by a person, who is not examined on oath before the court. A truthful and reliable dying declaration may form the sole basis of conviction and it can just be imagined that such a suicide note, if containing anything against the appellants, may have been sufficient to hold them guilty responsible. The converse of it should not also be allowed to have its operative effect under law for drawing any appropriate inference in favour of the appellants.

The case of the defence is seeking sufficient support from independent account given by number of defence witnesses staying in the locality. Persons staying in the immediate neighbourhood, sleeping in a room adjoining and in the hearing distance, had come in support of the appellants. Even the Mohalla Welfare Committee has vouch-safed the conduct of the appellants to say that there was no harassment on their part or demand of dowry ever raised or heard to be raised by the appellants. Not much credit can be given to some of the witnesses produced by the prosecution. Two of the witnesses are real brothers of the deceased. One of them is the complainant. They, thus, had obvious interest to support the prosecution, which was nothing but their own version. Rajinder Pal Singh Sarna (PW-12), who was examined to support the payment of Rs.5500/- by complainant Raj Kumar is attributed motive to say so. He is son of the counsel representing the complainant in this case. He is stated to have come in contact with the complainant while he used to stay in a hotel at Amritsar where the complainant was working as a Manager.

PW-12 was working at Mohali and would not have many occasions to visit Amritsar as such. When he gave evidence about his presence in Chandigarh, to be a witness to payment of amount, the defence confronted him with the fact that he was not present in Chandigarh during relevant time. The defence was even permitted to lead evidence in this regard and could establish that he was not present in Chandigarh during relevant period when he is supposed to have accompanied the complainant while making payment. Coupled with this is the fact that his father was representing the complainant in this very case as a counsel. Such a witness would certainly attract flanks. Nothing much cannot be said to the credit of remaining witnesses. Sat Pal (PW-9) is a witness, who deposed in support of the evidence of complainant Raj Kumar that they had gone and met the father of the appellants living in Golden Avenue, Amritsar. During his cross-examination, the witness stated that they had not gone to the Garden Colony, Amritsar to meet the father of the appellants. He was then questioned if he had so stated in his statement before the police and he denied the same. He was then confronted with the portion of his statement where it as so recorded. At this stage of his examination, PW-8 Chaman Lal, who was present in the court, intervened to say that they had gone to Golden Avenue. This would show his involvement, though he had already been examined and was still present in the court. He was rightly advised to keep silent or else action would follow against him in interrupting the proceedings. This may give an indication that these witnesses were well known to the complainant's family and had been produced to support the stand of the complainant. Though it may not be relevant, but the counsel for

the appellants has referred to a fact that two brothers of the complainant have later committed suicide. From this, he seems to urge that the suicide by deceased Kusum may depict some hereditary traits. This fact is being mentioned to ignore, it may be relevant for any consideration. The trial court has given detailed and elaborate reasons after referring to the law and the legal position to say that the prosecution had established sufficient evidence on record to prove the demand of dowry. No doubt, it is true that as per Section 113-B of the Indian Evidence Act, court is to draw presumption in the case of dowry death, yet this presumption is a rebuttable one. The prosecution has not been able to sufficiently explain the suicide note, which would stand to cast a doubt on the prosecution legally inferable in favour of prosecution. Even otherwise, the prosecution was not able to establish that there was demand soon before the death or that deceased Kusum was subjected to any cruelty or harassment by her husband and relatives etc. in connection with demand of dowry. Would the allegation of cruelty stand against the appellants if one was to believe the suicide note? Once this suicide note was found to be in the handwriting of the deceased, which had also been signed by her, it would be rather difficult to discard the same from consideration on the grounds as noticed by the trial court. Even if some dowry was given at the time of marriage, that would not mean that there was a demand in this regard and that such a demand was soon before the death.

Having regard to the afore-mentioned evidence, I am inclined to say that the prosecution has not succeeded in establishing the demand of dowry and that the death was on account

of any harassment or cruelty. Suicide note and the letters would lend credence to the story projected by the defence and would go to cast a doubt in the version of the prosecution. This would mean that the prosecution was not able to prove the charges beyond reasonable doubt.

Giving benefit of reasonable doubt to the appellants, I would allow this appeal and set-aside the conviction and sentence awarded to them. The bail bonds and surety bonds, if any, furnished by them the appellants shall stand discharged.

March 13, 2007 (RANJIT SINGH)
ramesh JUDGE